

SUPERIOR COURT OF ARIZONA, COCHISE COUNTY
PATRICIA MUNOZ, CHIEF PROBATION OFFICER

FILED

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ADULT PROBATION DISPOSITION/COVER SHEET

MARY ELLEN DUNLAP
CLERK OF SUPERIOR COURT
BY MEED
DEPUTY

NAME: David Joseph Duffy

SENTENCING DATE: 02/08/2018 SENTENCE TIME: 13:30

SENTENCING JUDGE: James L Conlogue

CRIMINAL DIVISION: V

PROSECUTOR: 201700136 - County Attorney

DEFENSE: Ivan Abrams - Privately Retained

NEW OFFENSE

CAUSE No.: CR2017000136 CHARGE: Count 1 13-3405A
MARIJ-TRANSPORT AND/OR SELL
N 2 F

DISPOSITION: _____

FELONY__MISDEMEANOR__OPEN-END__RESTITUTION__FINE__REIMBURSEMENT

NEW OFFENSE

CAUSE No.: CR2017000136 CHARGE: Count 2 13-3405A
MARIJUANA-POSSESS FOR SALE
N 2

DISPOSITION: _____

FELONY__MISDEMEANOR__OPEN-END__RESTITUTION__FINE__REIMBURSEMENT

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NEW OFFENSE

CAUSE No.: CR2017000136

CHARGE: Count 3 13-3415 DRUG
PARAPHERNALIA VIOLATION N 6
F

DISPOSITION:

FELONY__MISDEMEANOR__OPEN-END__RESTITUTION__FINE__REIMBURSEMENT

NEW OFFENSE

CAUSE No.: CR2017000136

CHARGE: Count 4 13-1003
N 2 F

CONSPIRACY

DISPOSITION:

FELONY__MISDEMEANOR__OPEN-END__RESTITUTION__FINE__REIMBURSEMENT

PRESENTENCE REPORT- PART ONE

Defendant: David Joseph DUFFY

Sentencing Judge: James L. Conlogue

Case No: CR201700136

Sentencing Date: February 8, 2018

SENTENCE INFORMATION

Charge(s):

The defendant was found guilty at trial of the following charges:

Count 1: On or about January 16, 2017, the defendant **knowingly transported marijuana for sale having a weight of more than two (2) pounds**, in violation of A.R.S. §§13-3405(A)(4), (B)(11), (C), (D), 13-3401, 13-105, 13-303, 13-701, 13-702, 13-703*, 13-801 and 13-821, a **Class 2 non-dangerous, non-repetitive felony offense**, as alleged in Count 5 of the Superseding Indictment.

Count 2: On or about January 16, 2017, the defendant **knowingly possessed marijuana for sale having a weight of more than four (4) pounds**, in violation of A.R.S. §§13-3405(A)(2), (B)(6), (C), (D), (E), 13-3401, 13-105, 13-303, 13-701, 13-702, 13-703*, 13-801 and 13-821, a **Class 2 non-dangerous, non-repetitive felony offense**, as alleged in Count 7 of the Superseding Indictment.

Count 3: On or about January 16, 2017, the defendant **unlawfully possessed drug paraphernalia** by knowingly using or possessing with the intent to use drug paraphernalia to pack, repack, store, contain or conceal a drug in violation of Chapter 34 of Title 13 of the Arizona Revised Statutes, to wit: burlap and other packaging material used to contain marijuana having a weight of approximately 242 pounds, in violation of A.R.S. §§13-3415, 13-3401, 13-901.01, 13-105, 13-303, 13-701, 13-702, 13-801 and 13-821, a **Class 6 non-dangerous, non-repetitive felony offense**, as alleged in Count 9 of the Superseding Indictment.

Count 4: On or about January 16, 2017, the defendant committed **conspiracy** to 1) transport marijuana for sale having a weight of more than two (2) pounds, and 2) possession of marijuana for sale having a weight of more than four (4) pounds, in violation of A.R.S. §§13-1003(A), 13-3405(A)(4), (B)(11), (C), (D), 13-3401, 13-105, 13-303, 13-701, 13-702, 13-703*, 13-801 and 13-821, a **Class 2 non-dangerous, non-repetitive felony offense**, as alleged in amended Count 3 of the Superseding Indictment.

*In as much as the offenses were committed on the same occasion it appears A.R.S. §13-703 does not apply.

Penalty:

As to Counts 1, 2 and 4:

Sentencing range for a Class 2 non-dangerous, non-repetitive felony offense:

3 years	4 years	5 years	10 years	12 years
Mitigated	Minimum	Presumptive	Maximum	Aggravated

The Court may impose a fine up to \$150,000 plus an 83 percent surcharge. Probation is not available.

As to Count 3:

Sentencing range for a Class 6 non-dangerous, non-repetitive felony offense:

.33 year	.5 year	1 year	1.5 years	2 years
Mitigated	Minimum	Presumptive	Maximum	Aggravated

The Court may impose a fine up to \$150,000 plus an 83 percent surcharge, and grant probation up to three (3) years.

Mandatory Sentencing Provisions:

<u>A.R.S.</u>	<u>Requirement</u>
§13-603(I)	Community Supervision
§13-610	DNA sample
§13-3405(D) (Cts 1, 2 and 4)	\$750 fine or 3 times the value of marijuana giving rise to this charge, whichever is greater
§13-3405(C) (Cts. 1, 2 and 4)	Prison Mandatory

Plea Agreement Stipulations/Special Terms:

The Defendant was found guilty at trial on January 26, 2018.

Co-defendant(s)/Disposition(s)/Restitution:

Case Number and Name	Status
CR201700137; Dora Celena MATIAS	Guilty by trial; Sentencing 2/8/18

STATEMENT OF OFFENSE

Law Enforcement Report Summary:

Inasmuch as the events were presented at trial, the following is a summary of provided reports:

On January 16, 2017, an officer with the Arizona Highway Patrol observed a driver following a vehicle too closely. He noted the driver of the vehicle, as well as the vehicle it was following, were driving erratically affecting the flow of traffic. The second vehicle, a green Honda CRV, abruptly exited the highway, and traffic stop was initiated.

Officers made contact with the occupants of the vehicle, identified as David Duffy, driver, front seat passenger, Dora Matias and rear passenger Javier Morales Carrillo. While speaking with the occupants, officers observed several burlap wrapped marijuana bundles inside the vehicle. Based upon the observation, all three suspects were arrested and transported to Sierra Vista for interviews and processing.

During an interview, Matias reported she knew the marijuana was inside the vehicle and that she had been communicating with an additional suspect via cell phone as to where to deliver the marijuana and Carrillo, who was determined to be in the country illegally. Matias expressed she had traveled to Coronado National Monument with Duffy where several unknown suspects loaded the vehicle with marijuana. She reported they expected to receive \$1,000 per marijuana bundle and was told to call once they reached Sierra Vista. Officers attempted to interview Duffy but he requested an attorney and did not answer any questions.

As officers were conducting interviews with the suspects, the Honda CRV was being processed. A total of 10 marijuana bales with a collective weight of approximately 242 pounds were removed from the vehicle. Additionally, officers seized cell phones from each suspect. A search warrant for the phones was obtained and officers found evidence of drug transactions and alien smuggling on the phone belonged to Matias.

Defendant's Statement:

As the defendant was found guilty at trial, he was advised he was not required to make a statement regarding the instant offense. The defendant indicated he wished to make a statement and expressed frustration regarding his conviction. Duffy reported he and his girlfriend Matias were contacted by a friend who asked them to travel to Sierra Vista to assist his father who had been in the Huachuca Mountains for three days. He expressed Matias, himself, and their dog drove to the location to pick up their friend's father, Javier Morales-Carrillo, but as they arrived the car was swarmed by multiple suspects who loaded it with the bundles of marijuana. He stated he observed a man standing nearby with a large rifle over his shoulder and felt in fear for his safety. Duffy expressed he then drove away with Carrillo, Matias and the marijuana as he was panicked and did not know what to do. He felt he was in a "fight or flight" situation and reported experiencing a panic attack.

With regards to sentencing, the defendant expressed fear and frustration regarding his conviction and the possible length of his prison sentence. The defendant reported he is afraid his emotional support dog Kyna will pass away during his incarceration and that his girlfriend could be deported. Duffy expressed he and Matias are innocent but he understands he was convicted at trial by a jury of his peers.

Duffy would like the Court to know that this his first offense of this sort and that he is not an illegal drug trafficker. He reported due to his mental health concerns he does not have it in him to be a drug trafficker and that he would ask the Court for mercy and the shortest prison sentence possible.

Victim's Statement:

Not applicable

RISK/NEEDS ASSESSMENT

Based upon the mandatory/stipulated prison sentence, application of the Offender Screening Tool (OST) assessment is precluded from the presentence report. Arizona Codes of Judicial Administration, § 6-201.01(J)(3) reads as follows: For all probation-eligible cases, presentence reports shall contain case information related to criminogenic risk and needs as documented by the standardized risk assessment and other file and collateral information.

Nevertheless, pursuant to the requirements of A.R.S. § 12-253(4), information regarding the defendant's background is presented in Part 2 of the Presentence Report.

COLLATERAL INFORMATION

Not applicable

EVALUATION**Summary:**

The 62-year-old defendant is before the Court pending sentencing on two counts of possession of marijuana for sale, each a Class 2 non-dangerous, non-repetitive felony offense, one count of possession of drug paraphernalia, a Class 6 non-dangerous, non-repetitive felony offense, and one count of conspiracy, a Class 2 non-dangerous, non-repetitive felony offense.

In consideration of the serious nature of the offense, the amount of drugs involved, and due to the statutory requirements, it would appear a term in the Arizona Department of Corrections on all counts is warranted and appropriate.

Time Credit Computation:

Date	Event	Days Credit
01/16/17	Initial Arrest	N/A
01/17/17	Bond	2 days
01/26/18	Bond Revoked	N/A
02/08/18	Sentencing	11 days
Total Time Credit =		13 days

Mitigating and Aggravating Circumstances:**A.R.S. §13-701(D) Aggravating Circumstances:**

The jury found the following aggravating factors pursuant to A.R.S. §13-701:

(D)(4) Presence of an accomplice

(D)(6) Offense committed for pecuniary gain

(D)(25) The weight of the marijuana significantly exceeded the statutory threshold to the extent that it must be considered in aggravation.

A.R.S. §13-701(E) Mitigating Circumstances:

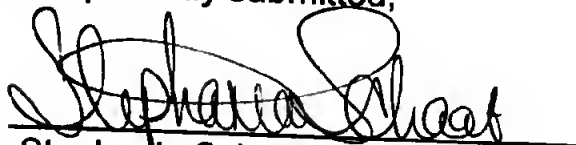
No circumstances identified.

Financial Assessments:

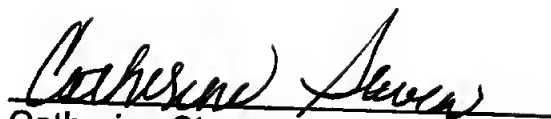
Time Payment Fee A.R.S. §12-116	<u>\$20</u>
Additional Assessment A.R.S. §12-116.04 (Arizona DPS DR2017-002684)	<u>\$13</u>
Fine A.R.S. §13-801(A) (Per statute)	<u>\$150,000</u>
83 Percent Surcharge A.R.S. §12-116 (Per statute)	<u>\$124,500</u>
Attorney Fees*	<u>\$0</u>

*Counsel for the defendant was privately retained.

Respectfully submitted,



Stephanie Schaaf
Deputy Adult Probation Officer
Bisbee Office (520) 432-8820



Catherine Stevens
Supervisor Adult Probation Officer
Bisbee Office (520) 432-8800

Date: February 5, 2018

PRESENTENCE REPORT - PART TWO**ASSESSMENT SUMMARIES**

Based upon the mandatory prison sentence for Count 1, application of the OST assessment and Adult Substance Use Survey-Revised is precluded from the presentence report. Arizona Codes of Judicial Administration, § 6-201.01(J)(3) reads as follows: For all probation-eligible cases presentence reports shall contain case information related to criminogenic risk and needs as documented by the standardized risk assessment and other file and collateral information.

Nevertheless, the following information regarding the defendant's background is presented pursuant to the requirements of A.R.S. § 12-253(4):

PERSONAL BACKGROUND INFORMATION

Personal and Family Data	<ul style="list-style-type: none">• Born in Iowa where he lived with his parents and seven siblings.• The defendant reports an estranged relationship with his family indicated they are a "dysfunctional" large family.• Involved in a relationship with his co-defendant, Dora Matias, for approximately six years.• Reports several close friends from his previous employment with the University of Arizona.
Education	<ul style="list-style-type: none">• High school graduate.• Obtained two Bachelor's degrees.
Employment	<ul style="list-style-type: none">• Retired from the University of Arizona and receives a monthly check from the Arizona State Retirement System.• Able to meet his financial obligations each month.

Alcohol History	<ul style="list-style-type: none">• Please see Confidential Section.
Substance Abuse History	<ul style="list-style-type: none">• Please see Confidential Section.
Mental Health History	<ul style="list-style-type: none">• Please see Confidential Section.
Medical and/or Physical	<ul style="list-style-type: none">• Please see Confidential Section.